

EXHIBIT A



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

6 The State of Arizona *ex. rel.* Terry Goddard,)
7 Plaintiff,) CASE NO. _____
8 VS.)
9 Abbott Laboratories; Amgen Inc.; Apothecon,)
10 Inc.; AstraZeneca, PLC; AstraZeneca U.S.;)
11 AstraZeneca Pharmaceuticals L.P.; Aventis)
12 Pharmaceuticals, Inc.; Aventis Behring)
13 L.L.C.; B. Braun Medical Inc.; Baxter)
14 International Inc.; Baxter Healthcare)
15 Corporation; Bayer Corporation; Bedford)
16 Laboratories; Ben Venue Laboratories, Inc.;)
17 Boehringer Ingelheim Pharmaceuticals, Inc.;)
18 Biogen Idec U.S.; Bristol-Myers Squibb Co.;)
19 Centocor, Inc.; Dey, Inc.; Fujisawa)
20 Healthcare, Inc.; Fujisawa USA, Inc.; Gensia)
21 Inc.; Gensia Sicor Pharmaceuticals, Inc.;)
22 Glaxosmithkline, P.L.C.; Glaxowellcome,)
23 Inc.; Hoechst Marion Roussel, Inc.; Immunex)
24)
25)
26)

1 Corporation; Janssen Pharmaceutica)
 2 Products, L.P.; Johnson & Johnson; McNeil-)
 3 PPC, Inc.; Merck & Co., Inc.; Oncology)
 4 Therapeutics Network Corp.; Ortho Biotech;)
 5 Pharmacia Corporation;)
 6 Pharmacia & Upjohn, Inc.; Rhone-Poulenc)
 7 Rorer, S.A.; Roxanne Laboratories, Inc.;)
 8 Schering-Plough Corporation; Sicor, Inc.;)
 9 Smithkline Beecham Corporation; TAP)
 10 Pharmaceutical Products, Inc.; Warrick)
 11 Pharmaceuticals Corporation; Watson)
 12 Pharmaceuticals, Inc.; Zeneca, Inc. AND)
 13 DOES 1 THROUGH 100; DOES 101-125;)
 14 DOES 126-150 AND DOES 151-200)
 15 Defendants.)
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Pursuant to 28 U.S.C. § 1441 *et seq.*, all Defendants hereby notice removal of this civil action from the Superior Court of the State of Arizona in and for the County of Maricopa, to the United States District Court for the District of Arizona. This Court has removal jurisdiction because this is a civil action “of which the district courts have original jurisdiction” and an action “founded on a claim or right arising under . . . the laws of the United States.” 28 U.S.C. § 1441(a) - (b); *see* 28 U.S.C. § 1331. In particular, federal question jurisdiction exists because the State of Arizona’s claim to recover Medicare Part B co-payments raises a substantial federal question in that it requires the resolution of issues of federal law relating to the federal Medicare program. *See Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. ___, 125 S. Ct. 2363 (June 13, 2005); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9, 28 (1983); *cf. State of Montana v. Abbott Labs., Inc.*, 266 F. Supp. 2d 250, 255-56 (D. Mass. 2003).

In further support of this Notice, Defendants allege:

1. On or about December 6, 2005, the State of Arizona filed the civil action captioned *The State of Arizona ex rel. Terry Goddard v. Abbott Laboratories*,

et al., CV2005-018711, in the Superior Court of the State of Arizona in and for the County of Maricopa.

2. Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is a true and correct copy of all substantive records and proceedings from the state court.

3. Pursuant to 28 U.S.C. § 1446(d), Defendants shall file a copy of this Notice of Removal with the Clerk of the Superior Court of the State of Arizona in and for the County of Maricopa, and serve Plaintiff and all other parties with this Notice of Removal promptly after the filing of this Notice.

I. THE STATE OF ARIZONA ACTION

4. This case is virtually identical to numerous cases that have been transferred from district courts throughout the country and consolidated in a Multidistrict Litigation (“MDL”) proceeding, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, MDL No. 1456 (the “AWP MDL”), which is currently pending before the Honorable Patti B. Saris in the United States District Court for the District of Massachusetts.

5. Like this case, many of the cases now pending in the AWP MDL were originally filed in state courts before removal to federal court and transfer to the AWP MDL. The AWP MDL currently includes similar actions brought by the States of Montana, Nevada, Kentucky, Illinois, and New York. Defendants will shortly notify the Judicial Panel on Multidistrict Litigation that this action is closely related to those pending before Judge Saris in the AWP MDL and thus should be treated as a “tag-along action” within the meaning of the Rules of the Judicial Panel on Multidistrict Litigation.

6. The two-count Complaint alleges claims against dozens of pharmaceutical manufacturers. It alleges, in part, that each Defendant pharmaceutical

1 manufacturer caused persons and entities in the State of Arizona, including private
2 individuals, third-party payors and the Arizona Health Care Cost Containment System
3 (the “Arizona Medicaid Program”), to overpay for that company’s pharmaceutical
4 products by reporting inflated average wholesale price (“AWP”) and other pricing
5 information, which allegedly serves as a basis for payments by such persons and
6 entities and reimbursement rates by the Arizona Medicaid Program for prescription
7 pharmaceuticals. Cmplt. ¶¶ 1-16.

8 7. Although the State of Arizona is the named plaintiff in this action, the
9 State specifically purports to prosecute this action on behalf of its citizens and
10 Arizona entities who allegedly have paid inflated prices for prescription
11 pharmaceuticals covered by Medicare. Cmplt. ¶¶ 9-13. The State alleges that by
12 reporting allegedly inflated AWP pricing information, Defendants have caused
13 Medicare Part B beneficiaries in Arizona to make inflated Medicare Part B co-
14 payments for Defendants’ prescription pharmaceuticals, because, until recently,
15 Medicare co-payments for prescription pharmaceuticals covered under Part B were
16 based upon published AWPs. Cmplt. ¶¶ 9-10, 133-155; *see also* 42 U.S.C. §§
17 1395l(a), 1395u(o). The State also alleges that by reporting allegedly inflated AWP
18 pricing information, Defendants have caused overpayment for physician-administered
19 pharmaceuticals outside of the Medicare Part B context as well as self-administered
20 pharmaceuticals for which AWP is used as a benchmark. Cmplt. ¶¶ 11-13, 156-174.
21 The State seeks to recover the amounts allegedly overpaid for increased
22 pharmaceutical costs, including Medicare Part B co-payments. Cmplt. ¶¶ 18-21.

23 8. The Complaint purports to allege claims under the Unlawful Practices
24 Section of the Arizona Consumer Fraud Act and provisions of the Arizona
25 Racketeering Statute. The Plaintiff seeks various legal and equitable remedies.
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II. REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

9. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 because it arises under the laws of the United States. Specifically, federal question jurisdiction exists because the State of Arizona's claim to recover Medicare Part B co-payments on behalf of Arizona Medicare Part B beneficiaries raises a substantial federal question in that it requires the resolution of issues of federal law relating to the federal Medicare program, namely the meaning of AWP in the federal Medicare statute and regulations. *See Grable & Sons Metal Prods., Inc. v. Darue Engineering & Manufacturing*, 545 U.S. ___, 125 S. Ct. 2363, 2368 (June 13, 2005) (removal jurisdiction exists where the meaning of a federal statute is an essential element of a state law claim); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 9, 28 (1983); *cf State of Montana v. Abbott Labs., Inc.*, 266 F. Supp. 2d 250, 255-56 (D. Mass. 2003).

10. The state law claims asserted by the State relating to Medicare Part B co-payments necessarily depend on an interpretation of the federal statute and regulations governing Medicare Part B reimbursement, which until recently pegged such reimbursement (and the corresponding 20% co-payment) to a pharmaceutical's AWP. Indeed, as Judge Saris has already ruled, a plaintiff in an AWP action cannot recover on its state law claims relating to Medicare Part B co-payments unless it proves its fundamental assertion that the AWP was "inflated" as the term AWP has been interpreted under the federal Medicare reimbursement statute and regulations.

1 AWP's reported by [defendant] and the meaning of AWP under the Medicare
2 statute.").

3 11. This Court has supplemental jurisdiction over Plaintiff's non-federal
4 claims pursuant to 28 U.S.C. § 1337.

5 **III. CONSENT TO REMOVAL**

6 12. All Defendants consent to and have joined in this Notice of Removal.

7 13. No Defendant waives any defense to the Complaint, including but not
8 limited to lack of service, improper service or lack of personal jurisdiction.

9 **IV. REMOVAL IS TIMELY**

10 14. Removal of this case is timely. The Complaint was not served on any
11 Defendant before December 8, 2005. This Notice of Removal is filed on January 5,
12 2006, within thirty days of December 8, 2005. *See* 28 U.S.C. § 1446(b).

13 **WHEREFORE**, Defendants notice the removal of this case to the United
14 States District Court for the District of Arizona pursuant to 28 U.S.C. §§ 1331 & 1441
15 *et seq.*

16
17 RESPECTFULLY SUBMITTED this 5th day of January, 2006,

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24
25 ¹ The Complaint also names AstraZeneca U.S. and AstraZeneca PLC as separate
defendants. AstraZeneca U.S. does not exist as an entity and has not been served.
AstraZeneca PLC is a public limited holding company organized under the laws of
26 England and Wales, must be served under the Hague Convention, has not been so

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24 served, and specifically reserves all arguments as to insufficient service. Moreover, in
25 a related case filed in this court, *Swanson v. TAP Pharmaceutical Products, et al.*,
26 Maricopa County Superior Court CV2002-004988, the Court dismissed AstraZeneca
PLC for lack of personal jurisdiction. At any rate, all AstraZeneca entities whose
consent to removal is required to effectuate removal do consent to removal.

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² The Complaint also names Rhone-Poulenc Rorer, S.A. and Hoechst Marion Roussel, Inc. as separate defendants. Rhone-Poulenc Rorer, S.A. and Hoechst Marion Roussel, Inc. do not exist as separate entities and have not been served. In any event, Aventis Pharmaceuticals Inc. and all related entities, whether or not properly named or served, consent to removal.

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24 ³ The Complaint also names Bedford Laboratories as a separate defendant.
25 Bedford Laboratories is not a separate entity and has not been served. Rather,
26 Bedford Laboratories is a division of Ben Venue Laboratories, Inc., which has also
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20 ⁴ The Complaint names GlaxoSmithKline plc, Glaxo Wellcome, Inc. and
21 SmithKline Beecham Corp. as separate defendants. Glaxo Wellcome, Inc. and
22 SmithKline Beecham Corp. have merged. In the United States, "SmithKline
23 Beecham Corporation" is the remaining corporation, and it is doing business as
24 "GlaxoSmithKline." Thus, the defendants named as Glaxo Wellcome, Inc. and
25 SmithKline Beecham Corp. are both appearing under the correct corporate name of
SmithKline Beecham Corporation, d/b/a GSK. Named defendant GlaxoSmithKline
plc is a holding company with no employees organized under the laws of England and
Wales. GlaxoSmithKline plc was not involved in the matters raised by the
Complaint, can only be properly served under the Hague Convention, has not been
served, and specifically reserves all arguments as to insufficient service. At any rate,
GSK and all related entities, whether or not properly named or served, consent to
removal.

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CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2006, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing:

I hereby certify that on January 5, 2006, I served the attached document (**minus Exhibit A - which consists of the documents previously filed in Superior Court**) by mail on the following:

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